

REMARKS

Claims 17-36 were pending in this case, and upon entry of this Amendment, Claims 17-36 will remain pending.

The Office Action rejects Claims 21, 22, 28, 33 and 34 alleging that the term "about" renders the claims indefinite. Applicants strongly traverse, and point out that the term "about" has been traditionally used in claim language without objection. Indeed, a search of the U.S. Patent and Trademark Office database for issued patents for claims employing the term "about" retrieved 816,711 issued patents through March 4, 2008. Because the word about might have a spatial use, such as something rotating "about" an axis, a further search was done for claims containing the words "about" and "percent". That search retrieved 81,216 hits. Indeed, a random glance at U.S. Patent No. 7,339,780 issued March 4, 2008 shows claims loaded with the term "about" referring to ranges for mole percents, molar ratios and the ratios of one component to another. U.S. Patent 7,339,088 issued the same day uses "about" to modify weight percents, parts per million and even a Bromine Index. Clearly this ground of rejection is improper and should be withdrawn. However, to remove issues and advance prosecution of the case, Applicants have amended the claims to remove the term "about", but Applicants remain steadfastly resolute in the position that they are entitled to claim a reasonable range of equivalents about each of the end points for the ranges claimed. If the Examiner is also convinced by the foregoing, Applicants respectfully request that the term "about" be reinserted in the claims by Examiner's amendment. In light of the foregoing, it is believed this ground of rejection has been fully traversed and overcome.

Claims 17-19, 21, 22, 26 and 34 stand provisionally rejected on the basis of nonstatutory double patenting over Claims 1 and 9 of copending U.S. Patent Application No. 10/474,115 (US 2004/0157743) in view of Baron et al (US 2004/0052878).

Applicants fail to see the relevance of US2004/0052878, and ask the Examiner to elaborate on that in any future Office Action. And, as the Office Action points out, US2004/015773 is directed to entirely different subject matter, namely a different alcohol ethoxylate and a neonicotinyl insecticide instead of the herbicidally active trazolinones of the present invention. Applicants respectfully traverse that the

present claims can be rejected on the basis of nonstatutory double patenting doctrine given these differences. However, again, to remove issues from the case and advance its prosecution, Applicants will file a terminal disclaimer upon notification of allowable subject matter in the present case to overcome this provisional rejection.

Claims 17-36 stand rejected under 35 U.S.C. Section 103(a) as obvious over Kojima et al (WO 96/31121) in view of Kaneko et al (U.S. 4,351,753) and Feucht et al (US 6,395,684 and 6,562,760).

Applicants respectfully ask that Kojima be translated in its entirety by the translators at the US PTO. We have only the abstract, and even then only a portion of it may be applicable. And of that portion, there is no teaching of the use of the present herbicides having the specifically claimed degree of ethoxylation of 4, 5, 6, 7 or 8 as described on page 3 of the specification. As explained clearly on pages 2 and 3 of the specification, the present invention has found an extremely surprising find that alcohol ethoxylates of the formula (I) of the present invention with a degree of ethoxylation of 4 through 8 are considerably more suitable as penetrants for herbicidally active triazolinones. That is the heart of the invention and represents an important step forward in the art for which Applicant's are entitled to patent protection. Indeed, the method claim of Claim 17 is directed to that very point. Nowhere in the abstract of Kojima, nor in the combination of Kojima with Kaneko is this taught or suggested.

The abstract of Kojima clearly on its face contains absolutely no limitation on the polyoxyethelene moiety at all, so it could not possibly suggest ANY preferred degree of ethoxylation.

And Applicants respectfully request a full translation of Kojima from the Examiner if the Examiner is going to rely upon it to reject the claims. As is stated in MPEP Section 706.02:

“II. RELIANCE UPON ABSTRACTS AND FOREIGN LANGUAGE DOCUMENTS IN SUPPORT OF A REJECTION

Prior art uncovered in searching the claimed subject matter of a patent application often includes English language abstracts of underlying documents, such as technical literature or foreign patent documents which may not be in the English

language. When an abstract is used to support a rejection, the evidence relied upon is the facts contained in the abstract, not additional facts that may be contained in the underlying full text document. Citation of and reliance upon an abstract without citation of and reliance upon the underlying scientific document is generally inappropriate where both the abstract and the underlying document are prior art. See *Ex parte Jones*, 62 USPQ2d 1206, 1208 (Bd. Pat. App. & Inter. 2001) (unpublished). To determine whether both the abstract and the underlying document are prior art, a copy of the underlying document must be obtained and analyzed. ***If the document is in a language other than English and the examiner seeks to rely on that document, a translation must be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection. The record must also be clear as to whether the examiner is relying upon the abstract or the full text document to support a rejection. The rationale for this is several-fold. It is not uncommon for a full text document to reveal that the document fully anticipates an invention that the abstract renders obvious at best. The converse may also be true, that the full text document will include teachings away from the invention that will preclude an obviousness rejection under 35 U.S.C. 103, when the abstract alone appears to support the rejection. An abstract can have a different effective publication date than the full text document. Because all patentability determinations are fact dependent, obtaining and considering full text documents at the earliest practicable time in the examination process will yield the fullest available set of facts upon which to determine patentability, thereby improving quality and reducing pendency.*** When both the abstract and the underlying document qualify as prior art, the underlying document should normally be used to support a rejection. In limited circumstances, it may be appropriate for the examiner to make a rejection in a non-final Office action based in whole or in part on the abstract only without relying on the full text document. In such circumstances, the full text document and a translation (if not in English) may be supplied in the next Office action. Whether the next Office action may be made final is governed by MPEP § 706.07(a)."

Emphasis added.

Therefore, Applicants kindly ask the Examiner to provide a full translation of the Kojima reference.

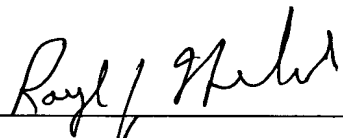
Kaneko is directed only to pesticides generally, and even that it is only directed to avoiding having to make an emulsifiable concentrate or a wettable powder by making a flowable formulation as set forth in column 1, lines 10-45. It merely notes in passing at column 1, line 54-56 that alcohol ethoxylates can be a good solvent, but there is no recognition of pairing the specifically claimed alcohol ethoxylates with the claimed degrees of ethoxylation of the present invention with the specifically claimed herbicidally active compounds (the claimed triazolinones) to obtain the enhanced penetration of the present invention, as demonstrated in the CS8269

Examples of the present invention. And further, the Kaneko formulae shown on at column 2, last line and column 3, line 15 differ markedly from that of the present invention in any event.

At page 6 of the Office Action, there are broad leaps of what is obvious in the art, with broad assumptions like that the triazolinones of the present invention will always behave in the same fashion as the other compounds of the references, and that if one would have been motivated to include $N=6$ for flowability, for some reason one would have selected that for the present invention despite the fact that here it is penetration and now flowability that is being sought. Penetration and flowability are not the same thing. Further, the Office Action simply concludes at the bottom of page 6 that the ranges are obvious, but where in Kojima, Kaneko or Feucht '684 or Feucht '760 are ANY ranges taught or suggested? It is only armed with impermissible hindsight after having read the present specification that one might come up with the claimed ranges of the present invention. Certainly, none of the references provide those ranges, and if they do, Applicants respectfully ask the Examiner to show where in the references such ranges are taught or suggested.

In light of these changes, Applicants believe the case is in condition for allowance. Review and reconsideration of the case and allowance of the same are respectfully requested.

Respectfully submitted,

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